

Surname 1/24/85

JAN 9 1985

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated on [REDACTED]. Your purpose is to dispense prescription and non-prescription pharmaceuticals and related health care supplies to members of [REDACTED] and to members of the general public at cost. By "cost" you mean actual cost paid by your corporation for such supplies plus the additional costs of your administering the sales.

In addition you indicate that you will conduct educational programs relating to the safe and proper use of drugs.

The information submitted further indicates that you are a wholly owned subsidiary of [REDACTED]. [REDACTED] is a for profit corporation organized and operated under the general business laws of the State of [REDACTED].

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated "exclusively" for charitable, educational, or other specified exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual and which does not engage in proscribed legislative or political activities.

Section 1.501(c)(3)-(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under Code section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Under section 1.501(c)(3)-1(b)(1) of the regulations, an applicant organization will satisfy the organizational test only if its articles of organization (creating or governing instrument): (1) limit the organization to one or more exempt purposes; and (2) do not expressly empower the organization to engage, except to an insubstantial degree, in activities which are not in furtherance of exempt purposes.

Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes under section 501(c)(3). Under subparagraph (2), an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To satisfy this requirement it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

The specific purpose for which you are organized-to dispense pharmaceutical and related health care supplies-is not necessarily a charitable purpose within the meaning of section 501(c)(3) of the Code.

Your governing instrument does not limit your purposes to one or more exempt purposes inasmuch as you are empowered to provide your services to members of a health maintenance organization that is general business corporation and to members of the general public in the same manner as any commercial trade of business.

Your primary activity is operating a drug store on the premises of and for the benefit of a for-profit corporation. Your income is derived from contracts you have entered into with the for-profit corporation and from sales to the general public. You do not provide any of your services on a gratuitous or below cost basis. You have also indicated that only [redacted] percent of your time may be devoted to educational activities. Therefore, aside from the fact that you are incorporated on a nonprofit basis, we do not see how you are readily distinguishable from organizations providing similar services but organized on an ordinary business basis.

The evidence available indicates to us that you are neither organized or operated exclusively for exempt purposes under section 501(c)(3). Section 1.501(c)(3)-1(a)(1) of the regulations provides that an organization is not exempt under section 501(c)(3) of the Code if it fails to meet either the organizational or operational test.

Based on the foregoing, we hold that you are not exempt from federal income tax under section 501(c)(3) of the Code. Therefore, contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns on Form 1120.

[REDACTED]

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted in duplicate within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director in Baltimore, Maryland. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with Code section 6104(c).

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

Sincerely yours,

[REDACTED]
Chief, Exempt Organizations
Rulings Branch

cc: DD, [REDACTED]
Attn: [REDACTED]

cc: [REDACTED]
[REDACTED]

cc: State officials
[REDACTED]

ORIGINAL letter mailed
1-9-85

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Code	[REDACTED]	[REDACTED]					
Surname	[REDACTED]	[REDACTED]					
Date	12/27/84	1-2-85					